

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3850 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R C PATEL

Versus

KAPADWANJ KELAVANI MANDAL & ORS.

Appearance:

MR RR VAKIL for Petitioner

MR BR PARIKH for Respondent No.1 & 2

MR JM PATEL for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/01/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner filed this writ petition for directions to the respondents No.1 and 2 to appoint him on the post of lecturer in History in the college run by respondent No.1.

3. The case of the petitioner is that he was duly selected by the Selection Committee and inspite of this fact, he has been refused the appointment on the post on the ground that a candidate belonging to Schedule Caste and Schedule Tribe was present at the time of interview. It is not in dispute that the post was reserved for Schedule Caste & Schedule Tribe candidate. It is true that attempts have been made by the respondent to make the appointment on the post from reserved category candidates, but reserved category candidates were not available and hence in the advertisement, last issued, it has been stated that in case the reserved category candidates are not available, candidates from general category may be considered. There is no dispute that the petitioner has been selected, but the respondent has not given him appointment as reserved category candidate was present in selection. In the reply, another reason has been given that applications should have been invited for the post on 'all India basis' as per the order dated 14th September 1988 of the Government whereas, in the present case, advertisement has been given in local newspapers only. The petitioner was not given appointment as his selection was considered to be not properly made.

4. It is a case where name of the petitioner has been placed in the select list but the larger question which arises for consideration is whether only on the basis of this, the petitioner has acquired any indefeasible right of appointment on the said post. It is a settled law that even when vacancies are available and the number of candidates are found fit, then too, the successful candidates do not acquire indefeasible right to be appointed. This right can be denied legitimately. A reference in this respect may have to the two decisions of the Hon'ble Supreme Court in the case of Union of India v. S.S. Uppal, reported in JT 1996(1) SC 258 and in the case of State of Bihar v. Mohd. Kalauddin, reported in JT 1996(1) SC 271. Further reference may have to three decisions of this Court in the cases of Rathod Jahabhai v. State of Gujarat, reported in 1995(1) GLR 427, N.S. Misra v. A.M.C., reported in 1995(1) GLR 483 and Commissioner of Police v. Santosh Vasant Mali, reported in 1995(2) GLR 1640. The respondents have given out the reasons which are justified reasons for denial of appointment to the petitioner. The posts were reserved for Schedule Caste and Schedule Tribe candidates and the respondents should have made all efforts to get suitable candidate from the reserved category. An advertisement has to be published for the appointment on the post of lecturer on an 'all India basis' which admittedly has not been done in the present case. In the selection also,

the candidates of reserved category were present. It is a different matter that some may not have stood to merits in comparison to the petitioner. Taking into consideration to totality of the facts of the case, I do not find any illegality in the action of the respondents not to give appointment to the petitioner.

5. In the result, this Specail Civil Application fails and the same is dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court, stands vacated. No order as to costs.

.....

(sunil)